

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland

In the Matter of
Lydia Scornavacchi,
Owner of
18600 Walkers Choice Road
Complainant

Vs.

Board of Directors
Walter Schneck, President
Normandie on the Lake I,
A Condominium
Respondent

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Case No. 137-O
July 30, 1992

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 30th day of July, 1992, found, determined and ordered as follows:

On October 23, 1991, Ms. Lydia Scornavacchi, owner of Apartment #1, 18600 Walkers Choice Road, Gaithersburg, Maryland, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that Normandie on the Lake I, A Condominium, Board of Directors, Governing Body of Normandie on the Lake I, A Condominium, hereinafter the Respondent, did not have the authority to require her to permanently remove her Siberian Husky dog from the property, inasmuch as Article V, Section 14(k) of the Community's Bylaws allows "the keeping of one (1) small, orderly house pet." The Complainant also alleged that the Respondent Board did not have the authority to enforce Rule #31 of the Community Rules and Regulations requiring her to permanently remove her Siberian Husky dog, which the complaint alleged weighed from 28 to 31 pounds, from the property, inasmuch as when she purchased her dwelling unit she was not given copies of the Community Rules and Regulations and was not made aware of the requirement of Rule #31 which limits pets to twenty (20) pounds or less. The Complainant additionally alleged that the Respondent Board's attempts to collect fines of \$10.00 per day for each day she kept her Siberian Husky dog on the property, was unreasonable inasmuch as she had made a good faith effort to comply with all of the Community's governing documents of which she was aware at the time she purchased her unit.

The Respondent Board maintained that it had the authority to require the Complainant to permanently remove her 30-35 pound Siberian Husky dog from the property pursuant to both Article V, Section 14(k) of the Community's Bylaws and Rule #31 of the Community's Rules and Regulations. The Respondent Board also maintained that it had the authority to impose a \$10.00 per day fine against the Complainant for her failure to permanently remove her dog from the property, pursuant to Article III, Section 2(j) of the Community's Bylaws.

The Complainant sought an order requiring the Respondent Board to waive enforcement of Article V, Section 14 (k), of the Community's Bylaws regarding "the keeping of one (1), small orderly house pet;" an order requiring the Respondent Board to waive the twenty (20) pound pet weight restriction contained in Rule No. 31 of the Community Rules and Regulations; an order preventing the Respondent Board from imposing fines against her and an order allowing her to keep her Siberian Husky dog.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On April 1, 1992, the Commission voted to hold a public hearing, which commenced and concluded on July 14, 1992.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant purchased her unit at Normandie on the Lake I, a Condominium, on April 25, 1991, and has resided in the unit since that time.
2. Some time prior to settlement, the Complainant received a set of Normandie on the Lake I governing documents from her real estate agent.
3. The official Normandie on the Lake I governing documents, which were in effect on April 25, 1991, included a set of Rules and Regulations that allow for the keeping of one small orderly house pet, twenty pounds or less (Rule #31). The Complainant did not receive a copy of that Rule prior to settlement.
4. The Complainant owns, and has living with her at her residence, a Siberian Husky dog with an average summer weight of 31 pounds and an average winter weight of 36 pounds.
5. On April 29, 1991, the Respondent notified the Complainant that she was in violation of Rule #31 based on her having a pet which exceeds the 20 pound weight limit.
6. On May 15, 1991, the Respondent invited the Complainant to attend a hearing scheduled for June 26, 1991, before the Respondent Board, to consider her alleged violation of Rule #31.
7. On July 5, 1991, the Respondent notified the Complainant that the Respondent Board had found her to be in violation of Rule #31 and allowed her sixty days from June 26, 1991, to remove the pet from the community. The Respondent further notified the Complainant that her continued violation of the Rules and Regulations after August 26, 1991, would result in her being fined \$10 for each day that the violation continued.
8. The Complainant has removed her dog from her residence on the average of 15 days each month since August, 1991, in an effort to comply, in part, with the Community Rules and Regulations.
9. The Respondent Board has taken action against at least two other residents of Normandie on the Lake I for violations of Rule #31 of the Community documents.

10. The Respondent Board is unaware of any currently existing violations of Rule #31 at Normandie on the Lake I, aside from the violation of the Rule by the Complainant.

CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence, including, but not limited to testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. Based upon stipulations made by the Complainant and Respondent, the Rules and Regulations established by the Respondent Board were properly adopted, and Rule 31 was in full force and effect on April 25, 1991, and continues to be in full force and effect.
2. The Complainant is currently in violation of Rule #31 of the Community Rules and Regulations by maintaining a pet weighing in excess of the weight limitation provided for in the Rule.
3. The Respondent Board followed proper procedures in notifying the Complainant that she was in violation of the Community Rules and Regulations and in holding a hearing on June 26, 1991.
4. The Respondent Board had, and continues to have, the authority to enforce Rule #31 of the Community Rules and Regulations by requesting that the Complainant remove her pet from the community.
5. The Respondent Board had, and continues to have, the authority to impose a reasonable fine against violators in order to enforce its Rules and Regulations.
6. The \$10 per day fine imposed by the Respondent Board against the Complainant for each day the Siberian Husky dog was kept at her premises in violation of the Rule is not unreasonable.

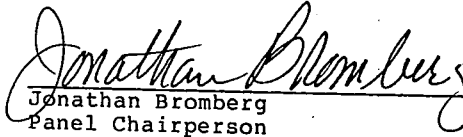
ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that:

1. The Complainant permanently remove her Siberian Husky dog from the Community by August 13, 1992.
2. The Complainant pay the Respondent a fine in the amount of \$1610.
3. No further fines shall accrue against the Complainant for the period from July 14, 1992, through August 13, 1992, so long as the dog is permanently removed from the premises by August 13, 1992.
4. Should the Complainant fail to permanently remove her dog from the Community by August 13, 1992, then the \$10 per day fine will again begin to accrue for each day that the violation continues, including but not limited to, each day during the period from July 14, 1992, that her dog was kept in the community in violation of the Rule.

The foregoing was concurred in by panel members Blumberg, Gick, and Bromberg.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.


Jonathan Bromberg
Panel Chairperson
Commission on Common Ownership
Communities

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